

SPECIAL PROVISION**DISPUTE REVIEW BOARD**

(INDIVIDUAL PROJECT BOARD)

1.01 GENERAL**A. Definitions**

1. **DRB** – See Dispute Review Board.
2. **Contract** – The construction contract.
3. **Dispute** – An issue, claim, change order request, or other controversy that remains unresolved following good faith negotiations between authorized representatives of the Contractor and the Department.
4. **Dispute Review Board** – One or three neutral individuals mutually selected by the Contractor and the Department to review Disputes and render findings and recommendations based on the Contract.

B. Formal and Informal DRB Review

1. This Special Provision provides for a formal DRB review process. However, the Contractor and the Department are encouraged to involve the DRB in emerging Disputes as early as possible. Therefore, Appendix B – Informal Review by the DRB, is included in this Special Provision to provide for early review and guidance from the DRB.
2. Any of the procedures for the formal DRB Review established by this special provision, as well as the Informal Review by the DRB set forth in Appendix B, may be altered or modified by mutual written agreement of the Contractor and the Department to better suit its needs in a particular dispute.

C. Summary

1. A DRB will be established to assist in the analysis of Disputes at the Resident Engineer level of review per Subsection 105.17.
2. Utilization of the DRB does not relieve the Contractor or Department from complying with all Contract terms and conditions, and does not waive any notice or timeliness requirements per Subsection 105.17. However, if a Dispute is referred to the DRB, the claim submittal and review time frames of Subsection 105.17 may be superseded by time frames established by the DRB, and agreed to in writing by both the Contractor and the Department.
3. Either the Contractor or the Department may refer a Dispute to the DRB. Such referral should be initiated as soon as it appears that the normal Department-Contractor dispute resolution effort is not succeeding.
4. Promptly thereafter, the DRB will impartially consider the Dispute(s) referred to it. The DRB will provide non-binding written findings and recommendations to the Contractor and the Department.

5. Although the findings and recommendations of the DRB should carry great weight for both the Contractor and the Department, they are not binding on either the Contractor or the Department. However, the findings and recommendations are admissible in subsequent claim resolution proceedings per section “1.04.K. Admissibility”.

D. Scope

This specification describes the purpose, procedure, function, and features of the DRB. A Three-Party Agreement among the Department, Contractor, and the selected DRB member(s) will formalize creation of the DRB and establish the scope of its services and the rights and responsibilities of the Contractor and the Department. In the event of a conflict between this Specification and the Three-Party Agreement, the latter governs. The Three-Party Agreement is attached as Appendix A.

E. Purpose

1. The purpose of the DRB is to provide an independent and impartial review of the Dispute and provide non-binding written findings and recommendations based on the Contract, applicable contract law, industry practices, and the facts presented.
2. It is not the purpose, or responsibility, of the DRB to resolve the Dispute. That responsibility remains with the Contractor and the Department. However, it is anticipated that the DRB review will assist the Contractor and the Department in resolving the Dispute.
3. Creation of the DRB is not intended as a substitute for Department or Contractor responsibility to make a good-faith effort to settle the Dispute. Indiscriminate referral of disputes to the DRB without prior attempts by the Contractor and the Department to resolve them shall be avoided.

F. Continuance of Work

Both the Contractor and the Department shall proceed diligently with the work and comply with all applicable Contract provisions while the DRB considers a Dispute.

G. Tenure of DRB

1. The DRB will be deemed established after the Department, the Contractor and the DRB execute the Three-Party Agreement (Appendix A).
2. The DRB will be dissolved as of the date of final payment to the Contractor unless earlier terminated or dissolved by mutual agreement of the Contractor and the Department.

1.02 MEMBERSHIP

A. General

The DRB will consist of either one or three members selected jointly by the Contractor and the Department. One member will serve as Chairperson on a three member DRB.

B. Criteria

1. Experience
 - a. It is desirable that all DRB members be experienced with the construction process including design, construction, contract administration, contract law, and resolution of construction disputes.

- b. It is not necessary that the DRB members be intimately familiar with the specific type of construction involved in the Dispute. The DRB may consult technical and legal experts if the need arises under the terms of Section 105.19 – Technical Analysis Support.
- c. All members of the prequalified panel shall have attended the one day DRB panel member workshop offered by the Dispute Review Board Foundation, or its substantial equivalent in other training, or shall be a qualified DRB panel member in another state which has training as a prerequisite to qualification for service on DRB panels.

2. Neutrality

- a. It is imperative that the DRB members be neutral, act impartially, and be free of any conflict of interest.
- b. For purposes of this subparagraph, the term “member” also includes the member’s current primary or full-time employer, and “involved” means having a contractual relationship with either the Contractor or the Department, such as a subcontractor, architect, engineer, or construction manager.
- c. Prohibitions; disqualifying relationships for prospective members:
 - (1) An ownership interest in any entity involved in the construction contract, or a financial interest in the contract, except for payment for services on this Dispute Review Board;
 - (2) Previous employment by, or financial ties to, any party involved in the construction contract within a period of one (1) year prior to award of the Contract, except for fee-based consulting services on other projects;
 - (3) A close professional or personal relationship with any key member of any entity involved in the construction contract which, in the judgment of either the Contractor or the Department, could suggest partiality; or
 - (4) Prior involvement in the project of a nature that could compromise the prospective member’s ability to participate impartially in the DRB’s activities.
- d. Prohibitions; disqualifying relationships for members:
 - (1) Employment, including fee-based consulting services, by any entity involved in the construction contract except with the express approval of both the Contractor and the Department;
 - (2) Discussion concerning, or the making of, an agreement with any entity involved in the Contract regarding employment after the Contract is completed.
- e. Any of the provisions of (a) through (d) above may be waived by mutual written agreement of the Contractor and the Department.

C. Disclosure Statement

As a part of the selection process, all prospective DRB members will be required to submit complete disclosure statements for the approval of both the Contractor and the Department. Each statement shall include a resume of experience, together with a declaration describing all past, present, and anticipated or planned future relationships, including indirect relationships through the prospective member’s primary or full-time employer, to this project and with the Contractor or the Department, or others involved in the Contract, including subcontractors, suppliers, design professionals, and consultants. Disclosure of close professional or personal relationships with all key members of the Contractor or the Department or other parties involved in the construction Contract shall be included.

D. Selection Process

- 1. The Department, in consultation with representatives of the Idaho highway construction industry, will establish and maintain a DRB Pre-Qualification Roster of at least 12 qualified individuals available to serve on DRB’s. Typical DRB candidates are retired or semi-retired engineers, contractors, claim consultants, or construction attorneys.

2. To form a three member DRB, the Department will send to the Contractor a copy of the resumes of all persons on the current DRB Pre-Qualification Roster. Within 10 calendar days, the Contractor and the Department shall each nominate, in writing, 3 individuals from the Roster. The Contractor and the Department will confirm the availability of their nominees and will provide complete and executed disclosure statements to the other party for review and approval.
3. Within 5 calendar days of receipt of the other party's nominees, the Contractor and the Department will select 1 of the 3 nominees and notify the other party. The Contractor and the Department will then meet to randomly select (draw names out of a hat) the remaining DRB member (or members, see below) from the remaining nominees. If both the Contractor and the Department selected the same nominee, then 2 more members will be randomly selected.
4. To form a one member DRB, the Department will send to the Contractor a copy of the resumes of all persons on the current DRB Pre-Qualification Roster. Within 10 calendar days, the Contractor and the Department will each nominate, in writing, two individuals from the Roster. The Contractor and the Department will confirm the availability of their nominees and will provide complete and executed disclosure statements to the other party for review and approval.
5. Within 5 calendar days of receipt of the other party's nominees, the Contractor and the Department will select one of the two nominees and notify the other party of their selection. The Contractor and the Department will then meet to randomly select (draw a name out of a hat) the DRB member from among the two selected nominees. If both the Contractor and the Department have previously chosen the same nominee, that person shall serve as the DRB member.
6. The Chairperson of the three member DRB will be selected by the members of the DRB.
7. The Department will notify all DRB members of their selection.
8. Should the need arise to select a replacement DRB member, a similar selection process will be used upon mutual agreement.

E. Three-Party Agreement

The DRB member(s) and the authorized representatives of the Contractor and the Department shall execute the Dispute Review Board Three-Party Agreement (Appendix A) within 2 weeks after the selections are made.

1.03 OPERATION

A. General

In general, the DRB will operate in accordance with this Special Provision. However, it is not desirable to adopt hard-and-fast rules for the functioning of the DRB. The entire procedure shall be kept flexible to adapt to changing situations. The DRB shall initiate, with the Department's and Contractor's concurrence, new procedures or modifications to existing procedures whenever this is deemed appropriate.

B. Contract Documents, Reports and Information

1. The Department will provide a set of plans and specifications to each DRB member.
2. The DRB members will be kept informed of construction activity and other developments by means of timely transmittal of relevant information requested by the DRB and prepared by the

Contractor and the Department in the normal course of construction, including, but not limited to, periodic reports and minutes of progress meetings. The DRB is not empowered to request reports, documents or other information that are not normally generated by the Contractor or the Department in the course of construction of the project.

C. Periodic Meetings and Visits

1. The DRB may visit the project site and meet with representatives of the Contractor and the Department at regular intervals and at the time of significant construction events. Meetings may be held by conference call, videoconference or any other means approved by the Contractor and the Department to minimize the time and expense involved in the process. The frequency and scheduling of these visits will be as agreed among the Department, the Contractor, and the DRB, depending on the progress of the work.
2. Each meeting shall consist of an informal roundtable discussion followed by a field observation of the work. Personnel of the Contractor and the Department will attend the roundtable discussion. The agenda will generally include the following:
 - a. Meeting convened by the Chairperson of the Dispute Review Board.
 - b. Contractor discussion items:
 - (1) work accomplished since the last meeting;
 - (2) current status of the work schedule and schedule for future work;
 - (3) anticipated or potential problems and proposed solutions;
 - (4) status of current and potential disputes, claims, and other controversies.
 - c. Department discussion items:
 - (1) the work schedule;
 - (2) perspectives on potential disputes, claims, and other controversies;
 - (3) status of past disputes, claims, and other controversies.
 - d. Such other items as the Contractor and the Department may wish to discuss with the DRB.
 - e. Set tentative date for next meeting(s).
3. The field observations shall cover all active segments of the work. Representatives of both the Contractor and the Department shall accompany the DRB.

1.04 REVIEW OF DISPUTES

A. General

1. The Contractor and the Department will cooperate to ensure that the DRB considers Disputes promptly, taking into consideration the particular circumstances and the time required to prepare appropriate documentation.
2. Procedures and time periods may be modified by mutual agreement.

B. Prerequisites to Review

A Dispute is subject to referral to the DRB when either the Contractor or the Department believes that bilateral negotiations are not likely to succeed or have reached an impasse.

C. Requesting Review

1. Either the Contractor or the Department may refer a dispute to the DRB. Requests for DRB review shall be submitted in writing to the Chairperson of the DRB. The Request for Review shall state clearly and in full detail the specific issues of the Dispute to be considered by the DRB.
2. The requesting party shall prepare the Request for Review and a copy shall be simultaneously provided to the other party.
3. After conferring with both the Contractor and the Department, the DRB Chairperson will establish a submittal schedule so that adequate time is allowed for the other party to respond to the requesting party's statements and the supporting documentation before the presentation.

D. Scheduling Review

1. The Three-Party Agreement shall empower the DRB to schedule presentations.
2. Upon receipt of a Request for Review, the Chairperson will schedule a presentation date.

E. Pre-presentation Requirements

1. Concise written position statements shall be prepared by both the Contractor and the Department, with page number references to any supporting documentation, and submitted to each DRB member and to the other party.
2. The Contractor shall submit its position statement first, followed by the Department.

F. Presentation

1. Unless otherwise agreed by the DRB, the Contractor and the Department, the presentation will be conducted at the nearest Department District office. However, any location that would be more convenient and still provide all required facilities and access to necessary documentation is satisfactory. Private deliberations of the DRB may be held at any convenient location.

The Contractor and the Department shall have representatives in attendance at all presentations. The Contractor will make its presentation first. The Contractor and the Department will be allowed successive rebuttals until all aspects are fully covered. The DRB members and the Contractor and the Department may ask questions, request clarification, or ask for additional data. In difficult or complex cases, additional presentations may be necessary in order to facilitate full consideration and understanding of all the evidence presented by both the Contractor and the Department. Both the Contractor and the Department shall be provided adequate opportunity to present their evidence, documentation, and testimony regarding all issues before the DRB. No documents, materials, reports, analysis or other information of any type shall be referenced in the presentations or considered by the DRB in its review unless the same was previously provided to the other party as supporting documentation for the position statement.

2. Unless otherwise agreed by the Contractor and the Department, presentations will relate to issues of entitlement only. When the Contractor and the Department agree that the DRB will review or give guidance on issues of quantum as well as entitlement, both the Contractor and the Department shall complete their presentations on entitlement before quantum is presented.
3. Normally, a formal transcript of the presentations will not be prepared. When requested by either the Contractor or the Department, the DRB may allow recordation and transcription by a court reporter with the cost to be allocated as agreed by the Contractor and the Department. Such

transcript, when prepared, shall not constitute the official record of the DRB Review. The record prepared by the DRB shall be the official record of the DRB Review. The DRB may provide for audio or video recordings of the presentations for the use of the DRB only.

4. The Contractor and the Department may have their attorneys in attendance at the presentations to counsel and advise them. When agreed by the Contractor and the Department, the attorneys will be allowed to make brief opening and closing remarks to the DRB. No other participation by attorneys at the presentations will be permitted except by mutual agreement of the Contractor and the Department.
5. If either the Contractor or the Department fails to appear before the DRB on the date scheduled for the presentations, without justifiable cause, the party that is in attendance shall prevail in their position on the dispute.

G. Deliberations

After the presentation is concluded, the DRB will confer to formulate its findings and recommendations. All DRB deliberations shall be conducted in private, with all individual views kept strictly confidential from disclosure to others.

H. Findings and Recommendations

1. The findings and recommendations of the DRB concerning any dispute are non-binding but admissible (see Admissibility section below).
2. It is not the responsibility of the DRB to resolve the Dispute. The findings and recommendations of the DRB shall be based upon the Contract, applicable contract law, industry practices and the facts. The DRB must also evaluate whether the burden of proof has been met.
3. The DRB's findings and recommendations will be provided in writing, by certified mail return receipt requested, to both the Contractor and the Department within 14 calendar days of the completion of the presentations. The DRB should set forth, as clearly as possible, the logic and reasoning behind its findings and recommendations. The findings and recommendations will address entitlement only, unless it is mutually agreed that the DRB will be asked to review or give guidance on issue of quantum as well. In difficult or complex cases, and in consideration of the DRB's schedule, this time may be extended by mutual agreement of the DRB, the Contractor and the Department.
4. If the DRB has been requested by the Contractor and the Department to review issues of quantum and the exact value of the quantum cannot be determined expeditiously by the DRB, then quantum may be addressed in the DRB's findings and recommendations by providing guidelines to be used to determine the quantum. The Contractor and the Department will then subsequently make the final determination of quantum. If there is still disagreement between the Contractor and the Department, then this disagreement may then be submitted back to the DRB for a final analysis and finding.
5. If the three person DRB is unable to reach unanimity in its findings and recommendations, the DRB will so advise the Contractor and the Department in the report of the DRB. A dissenting member may, in his/her discretion, prepare a minority report to be included with the DRB report.

I. Acceptance or Rejection

1. Within 7 calendar days of the date of the DRB's findings and recommendations, or such other time specified by the DRB, both the Contractor and the Department shall provide, by certified

mail return receipt requested, written notice to the other and to the DRB of acceptance or rejection of the DRB's findings and recommendations. If, with the aid of the DRB's findings and recommendations, the Contractor and the Department are able to resolve their Dispute, the Department will promptly process any required Contract changes.

2. If either the Contractor or the Department rejects the findings and recommendations of the DRB, the Dispute will continue under the administrative process of Subsection 105.17. Subsequent claim submittal time frames and review time frames may be revised by mutual written agreement of the Contractor and the Department, or if they are unable to agree, shall be established by the Department.

J. Clarification and Reconsideration

1. Should the dispute remain unresolved because of a bona fide lack of understanding of the findings and recommendations, either the Contractor or the Department may within the 7 calendar day period following the date of the DRB's findings and recommendations, request in writing, by certified mail return receipt requested, that the DRB clarify specified portions of its findings and recommendations.
2. If evidence becomes available which was not available at the time of the presentation, either the Contractor or the Department may request that the DRB reconsider its recommendation. The DRB will decide if it will reconsider the matter pursuant to such request.

K. Admissibility

If the DRB's findings and recommendations do not resolve the Dispute, the Contract, the written findings and recommendations, including any minority report, and the qualifications of the DRB members will be admissible as evidence to the extent permitted by law in any subsequent dispute resolution proceeding or forum to establish (a) that a DRB considered the Dispute, (b) the qualifications of the DRB members, and (c) the DRB's findings and recommendations that resulted from the process.

L. Legal Relations

1. Each DRB member, in the performance of his or her duties on the DRB, is acting in the capacity of an independent agent and not as an employee of either the Contractor or the Department.
2. Each DRB member is acting in a capacity intended to facilitate resolution of Disputes. Accordingly, the Contractor and the Department agree that to the fullest extent permitted by law, each DRB member shall be accorded quasi-judicial immunity for any actions or decisions associated with the review and findings and recommendations of Disputes referred to the DRB. No DRB member may be called as a witness by either the Contractor or the Department in subsequent proceedings on the dispute. Other than the findings and recommendations of the DRB, all records, proceedings and deliberations of the DRB are to be kept confidential to the fullest extent permitted by law. The DRB shall, upon completion of the project, turn all records of the DRB over to the Department for storage and preservation in accordance with Department policy and state law.
3. Each DRB member shall by agreement be held harmless for any personal or professional liability arising from or related to DRB activities. To the fullest extent permitted by law, the Contractor and the Department will indemnify all DRB members for claims, losses, demands, costs, and damages (including reasonable attorney's fees) for bodily injury, property damage, or economic loss arising out of or related to DRB members carrying out DRB functions. This indemnity is a joint and several obligation of the Contractor and the Department.

1.05 PAYMENT

A. Method of Measurement

1. The Contractor and the Department shall bear the costs and expenses of the DRB equally.
2. Preauthorized Time spent On-Site, at Hearings, at Meetings, or Reviewing the Dispute away from the Project Site – Each DRB member will be compensated for actual time spent at the rate of \$125 per hour with a maximum of \$1,000 per day. This rate shall include all normal incidental expenses such as telephone, fax, postage, courier, printing, and computer services. The DRB activity must be preauthorized by both the Contractor and the Department.
3. Travel Time to and from Preauthorized Meetings – Each DRB member will be compensated for actual travel time to and from DRB meetings at the rate of \$50 per hour with a maximum of \$200 each way.
4. Travel Expenses – Travel expenses will be reimbursed at standard state of Idaho rates for transportation, lodging, and meals for each day, or portion thereof, that the DRB member is traveling to or from, or attending, an authorized DRB activity.
5. The Department will provide, at no cost to the Contractor, administrative services such as conference facilities and secretarial services for the DRB.
6. The Three Party Agreement and the Special Provisions contain all of the provisions for compensation and expenses of the DRB. All DRB members shall be compensated at the same daily and hourly rate.
7. The Contractor shall pay the invoices of all Board members after approval by both the Contractor and the Department. The Contractor shall then bill the Department for one-half of such invoices.
8. Each DRB member may submit invoices for payment for work completed and qualified expenses no more often than once per month during the progress of work. Such invoices shall be in a format approved by the Department, and accompanied by a general description of activities performed during that period. The value of work accomplished for payment shall be established from the billing rate and hours expended by the DRB member together with qualified expenses incurred. Approved invoices will be paid within 30 days.
9. The cost records and accounts pertaining to this Agreement shall be kept available for inspection by representatives of the Department or Contractor for 5 years after final payment.

B. Basis of Payment

1. Payment for accepted work will be made as follows:

Pay Item	Pay Unit
Dispute Review Board – One Member (Contingency Item)	Contingency Amount
Dispute Review Board – Three Member (Contingency Item)	Contingency Amount

2. The Contractor shall pay the invoices of all Board members after approval by both the Contractor and the Department. The Contractor shall then bill the Department for one-half of such invoices.
3. The Contingency Amount pre-entered in the bid schedule represents the Department's estimate of its 50 percent share of the total approved DRB costs for the project. No amount has been included for technical experts per Subsection 105.19.
4. There shall be no markups applied to expenses connected with the DRB, either by the DRB members or by the Contractor when requesting payment of the State's share of DRB expenses. Regardless of the DRB recommendation, neither the Department nor the Contractor shall be entitled to reimbursement of DRB costs from the other party.
5. If the DRB desires special services such as legal, technical or other expert assistance or testimony, or other consultation, accounting, data research, and the like, both the Contractor and the Department must agree to provide the special services, and the procedures in Section 105.19 for technical expert assistance will be followed.
6. These special provisions and the Three Party Agreement contain all of the provisions for compensation and expenses of the DRB. All DRB members shall be compensated at the same daily and hourly rate.

APPENDIX A
DISPUTE REVIEW BOARD
THREE-PARTY AGREEMENT
(To be executed after award of the Contract)

I. Parties

- A. Department_____
- B. Contractor_____
- C. Dispute Review Board (DRB) Members:
1. _____
 2. _____
 3. _____

II. Situation

- A. The Contractor and the Department are now engaged in the construction of the _____ (project name).
- B. The Contract provides for the establishment and operation of a Dispute Review Board (“DRB”) to assist in resolving Disputes as defined therein.

III. Purpose

- A. The purpose of the DRB is to provide an independent and impartial review of such Disputes as are presented to it and to provide non-binding, written findings and recommendations based on the Contract, applicable contract law, industry practices and the facts presented. It is not the purpose, or the responsibility, of the DRB to resolve the Dispute. That responsibility remains with the Contractor and the Department. However, it is anticipated that the DRB’s review and findings and recommendations will assist in the resolution of the matter.

IV. Scope of Work

The scope of work of the DRB includes, but is not limited to, the following:

A. Project Site Visits

1. The DRB member(s) shall visit the project site to keep abreast of construction activities and to become familiar with the work in progress. The frequency, time, and duration of these visits shall be mutually agreed upon among the DRB, the Department, and the Contractor.

B. Establish Procedures

1. Operating procedures will be in accordance with the Special Provisions, a copy of which are attached and incorporated herein by this reference, and this Agreement except as modified or altered by the mutual agreement of the Contractor and the Department.

C. Findings and Recommendations

1. Upon receipt by the DRB of a written Request for Review of a Dispute, either from the Contractor or the Department, the DRB shall schedule a time for presentations by the Contractor and the Department and review and consider the Dispute, and thereafter issue written findings and recommendations to the Contractor and the Department.
2. It is expressly agreed that all DRB members are to act impartially and independently in the consideration of facts and conditions surrounding any Dispute. Prior to the deliberation of the DRB after the presentation, no DRB member shall express any opinion concerning the merits of any facet of the case.

D. Other

1. The DRB member(s) shall become familiar with the Contract documents, review periodic reports, and maintain a current file.
2. It is the express continuing responsibility of each member of the DRB to notify the Contractor and the Department, and disclose immediately, any and all existing or potential conflicts of interest, and/or inappropriate contact with either the Contractor or the Department that may exist or develop during the term of this Agreement.
3. Except for providing the services required in the Agreement, the DRB and its individual members shall refrain from giving any advice to either the Contractor or the Department concerning conduct of the work or the resolution of problems which might compromise the integrity of the DRB.
4. The DRB shall perform services not specifically listed herein to the extent necessary to achieve the purpose of this Agreement as agreed upon by the Contractor and the Department.

V. Contractor Responsibilities

- A. Except for its participation in the DRB's activities as provided in the Contract and in this Agreement, the Contractor shall not solicit advice or consultation from the DRB or its member(s) on matters dealing with the conduct of the work or resolution of problems which might compromise the integrity of the DRB.
- B. The Contractor shall:
 1. Furnish each DRB member with pertinent Contractor-prepared documents, such as progress schedules, to supplement the documents provided by the Department.
 2. In cooperation with the Department, coordinate the operation of the DRB.

VI. Department Responsibilities

- A. Except for its participation in the DRB's activities as provided in the Contract and in this Agreement, the Department shall not solicit advice or consultation from the DRB or its member(s) on matters dealing with the conduct of the work or resolution of problems which might compromise the integrity of the DRB.
- B. The Department shall:
 1. Furnish each DRB member with one copy of all Contract documents, including but not limited to the specifications, plans, addenda, minutes of progress meetings, change

orders, and other documents pertinent to the performance of the Contract and necessary to the Board's work.

2. In cooperation with the Contractor, coordinate the operations of the DRB.
3. Furnish conference facilities and provide secretarial and copying services.

VII. Time for Beginning and Completion

- A. The DRB shall be active throughout the duration of the Contract. It shall begin operation following execution of this Agreement and shall terminate its activities on completion of the construction contract after final payment has been made.
- B. The DRB members shall not begin any work under the terms of this Agreement until authorized in writing by the Contractor and the Department.

VIII. Payment

Payment to the DRB member(s) for their service hereunder shall be made in accordance with the "PAYMENT" section of the DRB special provisions attached.

IX. Termination of Agreement

- A. This Agreement may be terminated by mutual agreement of the Contractor and the Department at any time upon written notice to the members of the DRB.
- B. A DRB member may withdraw from the DRB by providing 28 calendar days written notice. Either the Contractor or the Department may remove any DRB member from the DRB at any time by providing notice thereof to the other party and the remaining members of the DRB if any, and stating the reasons for the decision to remove the member.
- C. Should the need arise to appoint a replacement DRB member, the replacement member shall be selected in a similar manner as the original member was selected. The selection of a replacement DRB member shall begin promptly upon notification of the necessity and shall be completed within 14 calendar days. This Agreement will be amended to indicate changes in DRB membership.

X. Legal Relations

- A. Each DRB member, in the performance of his or her duties on the DRB, is acting in the capacity of an independent agent and not as an employee of either the Contractor or the Department.
- B. Each DRB member is acting in a capacity intended to facilitate resolution of Disputes. Accordingly, the Contractor and the Department agree that to the fullest extent permitted by law, each DRB member shall be accorded quasi-judicial immunity for any actions or decisions associated with the review and findings and recommendations of Disputes referred to the DRB. No DRB member may be called as a witness by either the Contractor or the Department in subsequent proceedings on the Dispute. Other than the findings and recommendations of the DRB, all records, proceedings and deliberations of the DRB are to be kept confidential to the fullest extent permitted by law. The DRB shall, upon completion

of the project, turn all records of the DRB over to the Department for storage and preservation in accordance with Department policy and state law.

- C. Each DRB member shall be held harmless by the Contractor and the Department from any personal or professional liability arising from or related to DRB activities. To the fullest extent permitted by law, the Contractor and the Department shall indemnify all DRB members for claims, losses, demands, costs, and damages (including reasonable attorney's fees) for bodily injury, property damage, or economic loss arising out of or related to DRB members carrying out DRB functions. The foregoing indemnity is a joint and several obligation of the Contractor and the Department.
- D. The obligations and responsibilities of the DRB members under this Agreement shall not be assignable.

XI. Disputes Regarding This Three-Party Agreement

- A. Disputes among the parties arising out of this Agreement which cannot be resolved by negotiation and mutual concurrence among the parties, and actions to enforce any right or obligation under this Agreement shall be initiated in the Fourth Judicial District Court in Ada County, Idaho.
- B. All questions shall be resolved by application of Idaho state law.
- C. The Department, the Contractor, and the DRB members hereby consent to the personal jurisdiction of the Fourth Judicial District Court in Ada County, Idaho.

XII. Funding Agency Review

- A. The funding agencies for this project have the right to review the DRB findings and recommendations and to attend DRB meetings and presentations, but not to participate in or attend private DRB deliberations.

XIII. Effective Date

- A. This Agreement is effective as of _____.

DRB Member	DRB Member	DRB Member
_____	_____	_____
_____	_____	_____
date	date	date

Contractor	Department
By: _____	By: _____
Title: _____	Title: _____
Date: _____	Date: _____

APPENDIX B

INFORMAL REVIEW BY THE DRB

The Contractor and the Department may involve the DRB in the review of emerging Disputes at the Resident Engineer level of review. Utilization of Informal Review by the DRB does not relieve the Contractor or the Department from complying with all Contract terms and conditions. However, if informal review by the DRB is used, the claim submittal time frames and review time frames of Subsection 105.17 may be revised by mutual written agreement of the Contractor and the Department, or if they are unable to agree, shall be established by the Department.

At the request of either the Contractor or the Department, the DRB is available to provide informal non-binding preliminary review regarding an emerging Dispute. After an issue is brought before the DRB for informal review, both the Contractor and the Department shall have sufficient notice and time to prepare for Informal Review by the DRB. Upon the request of either the Contractor or the Department to the Chairperson of the DRB for an Informal Review by the DRB, the Chairperson shall be responsible to contact the other DRB members, if any, and to make necessary arrangements for the review.

Informal DRB Review meetings will be informal oral discussions with input and comment encouraged from the Contractor and the Department. After private deliberation, the DRB will provide initial impressions and guidance orally. Minority guidance (should it exist) will also be offered. No written findings and recommendations or record of the guidance will be made.

The DRB is not bound by its oral recommendations to the Contractor and the Department in the event that a Dispute that was considered in Informal Review by the DRB is later submitted to the DRB for formal review.

It is the intent of the Contractor and the Department to establish Informal Review by the DRB as a method of mediation of Disputes. To the extent permitted by law, the Contractor and the Department agree that all written or verbal communications and materials submitted and/or discussed during Informal Review by the DRB shall be privileged and confidential pursuant to Idaho Rules of Evidence 507 and 408. Rule of Evidence 408 shall also apply to all written or verbal communications prepared for or exchanged during the Informal DRB Review process.